

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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IN RE: Bair Hugger Forced Air Warming     MDL No. 2666 (JNE/FLN)  
Products Liability Litigation

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This Document Relates to  
**ALL ACTIONS**

**MEMORANDUM IN SUPPORT OF  
MOTION FOR FURTHER  
CONSIDERATION OF ORDER ON  
JOINT MOTION REGARDING  
CONTINUED SEALING**

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In its Order of September 20, 2017, the Court determined that several exhibits associated with Plaintiffs’ Motion for Leave to Amend the Master Long Form and Master Short Form Complaints to Include Claims for Punitive Damages (“Motion for Leave to Amend”) should remain under seal. (ECF No. 854, at 3 (“Docket entries 316, 329, 337, 340, 342, 343, 344, 345, 347, 377, 382, 385, and 441, identified in the parties’ joint motions, shall remain under seal.”).) The Court, however, ordered Plaintiffs’ Proposed Second Amended Master Long Form Complaint (ECF No. 308) and its Memorandum in Support of the Motion for Leave to Amend (ECF No. 311) to be fully unsealed, including those portions of both that quote from or paraphrase exhibits that will remain under seal.

Defendants request that the Court reconsider this portion of its September 20, 2017 order. Unsealing the full Proposed Second Amended Master Long Form Complaint and Memorandum would reveal the contents of exhibits that are remaining under seal, vitiating the protection the Court has agreed these exhibits deserve. Defendants therefore request that the Court maintain the Proposed Second Amended Master Long Form Complaint and Plaintiffs’ Memorandum under seal, and direct Plaintiffs to file public versions of both

documents that redact the quotations from and paraphrases of the under-seal materials. The portions that should be redacted are set forth in the chart below.

<b>ECF No.</b>	<b>Description</b>	<b>Quoted or described in Plaintiffs' proposed Master Complaint</b>	<b>Quoted or described in Plaintiffs' Memorandum</b>
316	Plaintiffs' Exhibit A (Report of Yadin David): Refers to/summarizes other documents that are confidential, under seal, or not part of the record	N/A	Page 11, beginning at "As explained by Dr. Yadin David" and continuing onto page 12 through "per minute of the Model 505."  Page 13, beginning at "In this case, the Defendant[s]" and continuing through the sentence ending "those devices well."
329	Plaintiffs' Exhibit 12 (3MBH01031246): Notes of an internal Arizant meeting to discuss regulatory issues relating to the Bair Paws and Polar Air products.	Paragraph 215	Page 12, beginning at the last sentence on page 12 starting "In the email, Defendants' Director" and continuing onto page 13 through the first sentence ending "is necessary."
337	Plaintiffs' Exhibit 21 (3MBH0022625): Notes of an internal Arizant meeting to discuss regulatory issues relating to the Bair Paws and Polar Air products. Neither product is at issue in this litigation.	Paragraphs 226-227, 229, 231-233	Page 16, beginning at "Indeed, in Project" and continuing through "antimicrobial agents" on the same page.  Page 16, beginning at "Despite degrading" and continuing onto

			<p>the top of page 17 through “at the blower outlet”</p> <p>Page 18, first full paragraph beginning at “Following these tests”</p>
340	<p>Plaintiffs’ Exhibit 24 (3MBH01617179):</p> <p>3M document reflecting internal scientific and technical discussions.</p>	Paragraph 234	<p>Page 18, entire paragraph beginning at “Possible design changes began anew”</p>
342	<p>Plaintiffs’ Exhibit 26 (3MBH0054396):</p> <p>Internal 3M email chain discussing ideas for design changes to the Bair Hugger system.</p>	N/A	<p>Page 19, entire paragraph beginning at “At the same time”</p>
343	<p>Plaintiffs’ Exhibit 27 (3MBH00630074):</p> <p>Internal 3M presentation summarizing engineers’ “ideation” (that is, brainstorming) of ideas for potential design changes to the Bair Hugger system.</p>	N/A	<p>Page 19, beginning at “Although none” and continuing through the end of page 22.</p>
344	<p>Plaintiffs’ Exhibit 28 (3MBH01922062):</p> <p>Exchange between 3M engineers and an engineer from 3rd party Pentair; there is a Confidentiality Agreement between 3M and Pentair that prohibits 3M from disclosing the type of information contained in this document.</p>	N/A	<p>Page 23, beginning at “As a result, Dr. Tan” and continuing through the end of the first full paragraph to “current rectangular filter.”</p>

347	Plaintiffs' Exhibit 40 (3MBH00001336): Internal draft of talking points for Arizant sales representatives from 2010.	N/A	Page 29, sentence beginning "After all, Defendants"
377	Plaintiffs' Exhibit 69 (3MBH00053467): notes of 3M employees from a strategic planning discussion.	Paragraph 262	Page 40, beginning at "During a strategy" and continuing through the end of the paragraph to "contamination issues."
382	Plaintiffs' Exhibit 74 (3MBH00005744): Internal Arizant strategic planning document.	Paragraph 265, final sentence only	Page 43, sentence starting "Nonetheless, after repeated"
385	Plaintiffs' Exhibit 77 (3MBH00544754): This document, entitled "Competitive Outline_v1.pptx," reflects internal correspondence among 3M employees relating to strategic planning.	N/A	Page 43, starting at "Yet Defendants immediately" and continuing through the end of that paragraph to "own testing."

Dated: October 18, 2017

Respectfully submitted,

s/Benjamin W. Hulse

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